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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE [REDACTED]

Office: Miami

Date: 17 JAN 2002

IN RE: Applicant: [REDACTED] NE

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because she falls within the purview of sections 212(a)(2)(A)(i)(I) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) and 1182(a)(2)(A)(i)(II). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act, 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

The record reflects the following:

1. On October 3, 1991, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED], the applicant was indicted for Count 1, possession of a controlled substance (cocaine); and Count 2, use or possession of drug

paraphernalia. On November 26, 1991, the applicant was adjudged guilty of both Counts 1 and 2, and she was sentenced to imprisonment for a term of 364 days as to Count 1, concurrent with Case No. [REDACTED] (paragraph 3 below), and imposed \$225 in fines and costs. Entry of sentence was suspended as to Count 2.

2. On October 2, 1991, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED], the applicant was indicted for Count 1, burglary (unoccupied); and Count 2, petit theft. On November 26, 1991, the applicant was adjudged guilty of both Counts 1 and 2, and she was sentenced to imprisonment for a term of 364 days as to Count 1, concurrent with Case No. [REDACTED] (paragraph 3 below), and imposed \$225 in fines and costs. Entry of sentence was suspended as to Count 2.

3. On July 7, 1990, in Dade County, Florida, Case No. [REDACTED] the applicant was arrested and charged with Count 1, auto theft; Count 2, no valid driver's license; and Count 3, defrauding an innkeeper. While the applicant submits incomplete court documents regarding this case, the Federal Bureau of Investigation report shows that on September 10, 1990, the applicant was found guilty of Count 1 and adjudication of guilt was withheld. The applicant, however, violated the terms of her probation and she was sentenced to imprisonment for a term of 364 days.

4. On June 5, 1997, in Dade County, Florida, Case No. [REDACTED] the applicant was found guilty of Count 1, disorderly intoxication; and Count 2, resisting arrest without violence. She was sentenced to credit for time served as to both Counts 1 and 2.

The record further reflects that the applicant was arrested for the following in Dade County, Florida. However, the court's final dispositions of the arrests are not contained in the record of proceeding:

5. Arrested on November 6, 1981 and charged with retail theft.

6. Arrested on December 11, 1981 and charged with retail theft under Case No. [REDACTED]

7. Arrested on July 18, 1982 and charged with possession of marijuana.

8. Arrested on May 16, 1989 and charged with burglary (unoccupied).

9. Arrested on May 6, 1990 and charged with burglary (unoccupied), under Case No. [REDACTED]

10. Arrested on April 11, 1992 and charged with Count 1, aggravated assault; Count 2, burglary of occupied structure with assault therein; Count 3, disorderly conduct; and Count 4, disorderly intoxication.

Theft or larceny, whether grand or petty, is a crime involving moral turpitude (paragraphs 2 and 3 above). Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966). Likewise, burglary (with intent to commit theft) is a crime involving moral turpitude (paragraph 2 above). See Matter of R-, 1 I&N Dec. 540 (BIA 1943); Matter of M-, 2 I&N Dec. 721 (BIA 1982); Matter of Leyva, 16 I&N Dec. 118 (BIA 1977); Matter of Frentescu, 18 I&N Dec. 244, 245 (BIA 1982). The indictment report shows that the applicant did unlawfully enter or remain in a dwelling without the consent of the owner or custodian, having an intent to commit theft.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on her convictions of crimes involving moral turpitude.

The applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on her convictions of possession of cocaine and possession of drug paraphernalia (paragraph 1 above). There is no waiver available to an alien found inadmissible under this section except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.